



# Arizona State Senate Issue Brief

November 7, 2006

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## ARIZONA'S GROUNDWATER MANAGEMENT CODE: *Exempt Wells*

The Arizona Department of Water Resources (ADWR) regulates all groundwater wells in Arizona in accordance with Arizona's Groundwater Management Code. Within an Active Management Area (AMA) a person must have a groundwater right or permit from the ADWR in order to pump groundwater legally, unless the person is withdrawing groundwater from an exempt well. An exempt well is a well with a maximum pump capacity of 35 gallons per minute (gpm). Any well, regardless of its location in or out of an AMA, with a maximum pump capacity of 35 gpm is considered an exempt well for regulatory purposes.

Exempt wells may be used to withdraw groundwater only for nonirrigation purposes. If the well was drilled after April 1983, withdrawals for purposes other than domestic and stock watering are prohibited from exceeding ten acre feet (a/f) per year. An acre foot equals 326,000 gallons. Exempt wells must be registered with the ADWR but are subject to fewer requirements than nonexempt wells.

Unlike owners of wells that have a maximum pumping capacity greater than 35 gpm, owners of exempt wells are exempt from needing a groundwater withdrawal authority, complying with the ADWR's well spacing rules, using a water measuring device, paying groundwater withdrawal fees and filing annual groundwater withdrawal reports.

### WATER DISCLOSURE REQUIREMENTS

Exempt wells are commonly linked to land in which multiple homeowners share water from a single well. Arizona real estate law requires sellers of land that has been divided (a lot split) to disclose certain things to the buyer in an affidavit of disclosure (affidavit). The affidavit discloses pertinent information related to the property, including a disclosure of whether the property is served by a private well, a shared well or no well. If the property is served by a shared well, the seller must disclose whether the shared well is a public water system. The buyer has the right to rescind the sales transaction for five days after the disclosure is provided to the buyer.

In 2006, the Arizona Legislature passed additional water disclosure requirements for land that has been divided. Among the elements added to the affidavit is a statement notifying the buyer that if the property is served by an exempt well then the ADWR may not have made a water supply determination and advises the buyer to contact the water provider for more information. Land sales requirements pertaining to water supply also exist in the Arizona Groundwater Code for subdivisions.

## WELL DRILLING RULES

A landowner in an AMA must file a Notice of Intent to Drill (NOI) with the ADWR before drilling a well and pay a filing fee of \$150. A new NOI must be filed if a well is not drilled within one year of the previous NOI filing.

The landowner is required to use a licensed well driller and comply with the ADWR's minimum well construction standards. If the well is to be used for domestic purposes on a parcel of land of five or fewer acres, a site plan must be submitted to county or local health authorities for review to determine whether the well location complies with state and local laws pertaining to well proximity to septic tanks and sewer systems. Generally, a domestic well must be at least 100 feet from any septic tank or sewer system. Additionally, the property on which the well is to be drilled cannot be within 100 feet of a distribution line of a municipal provider with an assured water supply designation, with certain exceptions.

A second exempt well serving the same use at the same location within an AMA is only permitted if all the following are met:

- 1) both wells are on the same parcel and the parcel is at least one acre in size.
- 2) the first exempt well is not capable of consistently producing more than three gpm.
- 3) withdrawals from both wells will not exceed five a/f per year.
- 4) the county or local health authority approves the well location.

## EXEMPT WELL DATA

Water measuring and reporting is not required for exempt wells. Therefore, there is little actual data available pertaining to how much water is withdrawn from these types of wells. The only information available to the ADWR for tracking exempt wells is the NOI and a drill report. A drill report is required to be submitted to the ADWR within 30 days after the well has been drilled. The ADWR acknowledges that drill reports might not always be properly filed after an exempt well has been drilled.

As illustrated in the following chart, as of September 2006, the ADWR had 52,211 drill reports on record out of approximately 97,000 NOIs since 1980.

Exempt Wells by County September 2006		
County	Exempt Wells with NOIs	Exempt Wells with Drill Reports
Apache	3,868	2,161
Cochise	11,163	5,082
Coconino	2,332	1,320
Gila	4,926	2,267
Graham	2,185	755
Greenlee	1,042	232
La Paz	2,452	1,192
Maricopa	14,051	8,560
Mohave	6,510	3,743
Navajo	3,815	2,269
Pima	7,512	3,534
Pinal	5,695	3,043
Santa Cruz	2,795	1,181
Yavapai	25,183	15,011
Yuma	2,429	1,861
<b>TOTAL</b>	<b>96,958</b>	<b>52,211</b>

Additionally, nearly 22,000 of the drill reports were for exempt wells drilled within AMAs.

<b>Exempt Wells by AMA September 2006</b>		
<b>AMA</b>	<b>Exempt Wells with NOIs</b>	<b>Exempt Wells with Drill Reports</b>
Phoenix	14,341	9,149
Pinal	2,247	1,280
Prescott	10,981	7,422
Santa Cruz	1,298	515
Tucson	7,019	3,338
<b>TOTAL</b>	<b>35,886</b>	<b>21,704</b>

## ADDITIONAL RESOURCES

- “Arizona’s Groundwater Management Code: Active Management Area,” Arizona State Senate Issue Brief  
[www.azleg.gov/briefs.asp](http://www.azleg.gov/briefs.asp)
- “Arizona’s Groundwater Management: Lot Splits and Subdivisions,” Arizona State Senate Issue Brief  
[www.azleg.gov/briefs.asp](http://www.azleg.gov/briefs.asp)
- Groundwater Code: Arizona Revised Statutes, Title 45, Chapter 2
- Arizona County Planning and Zoning law: Arizona Revised Statutes, Title 11, Chapter 6
- Arizona Conveyances and Deeds law: Arizona Revised Statutes, Title 33, Chapter 4
- H.B.2431 (affidavit of disclosure; water service), Laws 2006, Chapter 96
- Department of Water Resources  
<http://www.azwater.gov/dwr>
- Department of Real Estate  
<http://www.re.state.az.us/>